

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9818 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

3 to 5 No

SHAH & PATEL CONSTRUCTION CO

Versus

BARODA MUNICIPAL CORP.

Appearance:

Mr K G Vakharia, Sr.Advocate with M/s. YN OZA and R J
Oza, for Petitioner
Mr S N Shelat, Addl.Advocte General with
Mr Pranav Desai, Advocate for the respondent

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 22/07/96

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner Company seeks direction to quash and set aside Resolutions No.4 and 5 dated 22.2.1996 passed by the Standing Committee of the Vadodara Municipal Corporation

and Resolution No.177 dated 6.3.1996 of the General Board.

2. The facts as culled out from the pleadings of the parties are that as per the advertisement published in various newspapers dated 5.6.1[994, a part of the final plot No.76 of T.P. Scheme No.I, admeasuring 10599 sq. meters reserved for the purpose of neighbourhood centre (local shops, library, public hall, open space, electric sub-station) was put to auction on 30.6.1994. The petitioner, a construction company offered the highest bid of Rs.1,900/- per sq. meter. It appears from the auction proceedings that the petitioner submitted their altered/additional conditions mentioned as under:-

1. Final plot No.76 of T.P. Scheme No.I is reserved for "neighbourhood centre." It will be the responsibility of the Corporation to change the purpose and grant permission for residential, commercial and high-rise building.
2. After succeeding in the bid Municipal Corporation has to sign lease deed for 99 years in favour of the person as mentioned by the successful bidder. This may be for one or more parts of the land.
3. After the payment of 10% of premium amount, it will be the responsibility of Baroda Municipal Corporation to obtain permission from VUDA, ULC, in respect of Corporation and title clearance certificate.
4. It will also be the responsibility of the Corporation to pass the lay-out of the land and building permission. After obtaining all the permissions, the successful bidder has to pay amount by three bi-monthly equal instalments.
5. After payment of 10% of premium amount the successful bidder can put sign board mentioning their name on the land in question.
6. On the handing over of the bank guarantee the possession of the land will be handed over to the successful bidder and the possession letter as well as the agreement is to be signed by the Corporation.
6. After payment of 10% premium amount, the Banakhat of lease of the land in question is to be

registered.

3. Out of the above conditions, conditions No.1,2,5 and 6 were accepted by the Municipal Commissioner and condition No.3 was partly accepted to the extent that N.A. charges would be borne by the buyer of the land, and accordingly, the auction proceedings were placed before the Standing Committee on 1.7.1994 for information. The Standing Committee, vide its resolution No.156 dated 1.7.1994 recorded as "taken note of". The recommendations of the Standing Committee were accepted by Resolution of the General Board No.108 dated 8.7.1994. It may be stated that as there was no elected body at the relevant time and as such the Administrator was exercising powers of the Standing Committee as well as the General Board. Thus, in fact, the Resolutions dated 1.7.1994 and 8.7.1994 are of the Administrator, Vadodara Municipal Corporation.

4. On 11.7.1994, the petitioner deposited 10% amount of the public auction which comes to Rs.28,68,810. The total amount of the public auction was required to be paid in three instalments at a periodical stage of three months each. On 22.7.1994, a Banakhat (agreement) was executed between the petitioner and the Corporation. Resolution of the Administrator dated 7.7.1994 and the auction held on 30.6.1994 were challenged before this Court by one Abdulbhai Mohmmdbhai Patel by way of filing a Special Civil Application, which was registered as SCA No.10675/94. The auction and the Resolutions were challenged on the ground that in the advertisement it was shown that final plot No.76 was reserved for the purpose of neighbourhood centre, and there was no mention in the advertisement that the Corporation will get the aforesaid reservation cancelled and make the plot utilisable for residential, commercial and high-rise building purposes. It was submitted that if the condition of auction altered during the auction proceedings would have appeared in the advertisement, he would have also participated in the auction proceedings. It was further submitted that not only the petitioner but many others would have taken part in the auction and would have offered higher considerations than the considerations offered by M/s.Shah & Patel Construction Company. There was disinclination to take the plot for utilising it only as a neighbourhood centre. This Court, by order dated 7.9.1994 granted ad-interim relief restraining the respondent-Corporation from giving the possession and from transferring plot No.76. Mr P V Mehta, Deputy Municipal Commissioner of the Corporation filed an

affidavit on behalf of the Corporation. He stated that in response to the advertisement for auction of plot No.76, three parties had shown interest and paid security deposit namely; (1) Ashok Construction Company, (2) Dilipbhai Chokshi and (3) M/s. Shah & Patel Construction Company - respondent No.3 in the said petition. He also stated that the partner of Shah & Patel Construction Company had given a list of counter conditions for obtaining the land in question. The said counter conditions were also read before the parties present at the time of auction. The said respondent No.3 had given the highest bid of Rs. 1900/- per sq. meter. The proceedings of the auction were prepared and the same were put before the Standing Committee and the General Board for their perusal. He further stated that the auction and the proceedings were taken into consideration by the Standing Committee by Resolution No.156 dated 1.7.1996 and by Resolution No. 108 dated 8.7.1994. He also stated that the petitioner in the said petition i.e. Abdulbhai Mohamadbhai Patel requested the respondent-Corporation to allot plot No.76 of T.P. Scheme no.I at the rate of Rs.2400/- per sq. meter in place of Rs. 1,900/- per sq. meter which was offered by M/s. Shah & Patel Construction Company. But since the auction had already been finalised, the said offer could not be considered. On the election of the Corporation, the elected body took over on 1.7.1995. The said petition was dismissed as withdrawn by the order of this Court dated 5.7.1995. Thus, the auctioned plot was not transferred as the interim relief continued till the election of the new body. After the Special Civil Application was dismissed as withdrawn and the interim relief was vacated, the petitioner approached the respondent-Corporation for taking necessary steps for implementation and execution of the public auction as per the terms and conditions entered between the petitioner and the respondent-Corporation. In spite of repeated requests, nothing was done by the Corporation, and therefore, the petitioner approached this Court by way of filing the present Special Civil Application on 20.11.1995, challenging the inaction on the part of the respondent-Corporation for not implementing and executing the terms and conditions of the public auction held on 30.6.1994. This Court, vide order dated 11.1.1996 directed the Commissioner, Vadodara Municipal Corporation to take a decision in the matter and pass a speaking order within a period of one week from the date of the order. Accordingly, the Commissioner passed a speaking order saying that at the time of auction M/s. Shah and Patel Construction Company had submitted their altered/additional conditions of which, condition No.1 to

5 and 6 were accepted while condition No.3 was partly accepted. The auction proceedings were placed before the Standing Committee and the General Board in the form of proposal for information. The Standing Committee and the General Board "took note of" the said proposal. He further stated that as there was change in the conditions of auction, from the neighbourhood centre to residential, commercial and high-rise building and also to obtain N.A. permission, the Commissioner deemed it fit to resubmit the matter to the competent authority i.e. the Standing Committee of the Municipal Corporation and through them to the General Board. It was necessary to resubmit the same in view of the fact that the earlier Standing Committee and the General Board had only "taken note of" of the proposal of the Municipal Commissioner dated 23.6.1994 which does not amount to according approval of the competent authority. It was thus stated that he was duty bound to resubmit the matter relating to the land in question to the competent authority i.e. the Standing Committee, and through them to the General Board. After the decision on the auction in question, the matter was considered by the Standing Committee in its meeting held on 22.2.1996. In the view of the Standing Committee, the alteration of the condition of the auction by the Municipal Commissioner without prior approval was not within his competence. Even if the Commissioner felt that the alteration was necessary, he ought to have obtained prior approval of the General Board and further in the larger public interest after obtaining the approval of the General Board, a fresh advertisement for auction ought to have been issued. In the opinion of the Standing Committee, if the altered conditions were brought to the notice of the public by way of fresh advertisement, there were good possibilities of fetching higher price. The Standing Committee also considered that the decision with respect to change of purpose would have been taken only by the Vadodara Urban Development Authority (VUDA) and the State Government and it was not within the competence of the Municipal Commissioner. In view of this, the Standing Committee resolved to cancel the order of the Commissioner and to place the matter before the General Board. The decision of the Standing Committee was accepted by Resolution No.177 of the General Board dated 6.3.1996. The General Board expressed that "having considered the submission of the Municipal Commissioner and the recommendation of the Standing Committee and having thoroughly discussed the matter, the auction held on 30.6.1994 be cancelled and the money received may be returned". The Resolution of the General Board as well as the Standing Committee has been challenged by way of amendment in this Special Civil

Application.

5. Mr K G Vakharia, Sr. Advocate appearing for the petitioner has contended that the impugned Resolution of the Standing Committee and also of the General Board are ex-facie illegal as the same have been passed in utter disregard to the principles of natural justice. It is also submitted that the Municipal Corporation has no authority to cancel the public auction having once accepted the earnest money and executed the Banakhat. The Corporation is estopped from cancelling the auction on the principles of promissory estoppel. It is further submitted that even if the Municipal Corporation has power to cancel the auction, it has proceeded on an erroneous assumption that there was no approval. On the other hand, Mr S N Shelat, Ld. Addl. Advocate General appearing with Mr Pranav Desai for the respondent Corporation has supported the impugned Resolution. It is submitted that the auction proceedings were illegal as the Commissioner could not have altered or changed the auction conditions on the spot. A decision in this regard could have been taken only by the General Board and in that event also it was necessary to give fresh advertisement incorporating the altered conditions. Mr Shelat also stress that the General Board has power to review or to recall its earlier decision. It is submitted that "neighbourhood centre" finds place in the Scheme prepared in the year 1974 under the Bombay Town Planning Act. It is also submitted that the purpose given under the scheme namely; the "neighbourhood centre" is a part of the Act and it has legislative meaning. With respect to the principles of natural justice, he submits that the act of the Standing Committee is an administrative act in which the principles of natural justice is not required to be followed. It is also submitted that the relief claimed in the present Special Civil Application is almost in the nature of specific performance, which cannot be granted in a petition under Article 226 of the Constitution of India. He also submits that the respondent-Corporation will be able to resist the suit for specific performance on the ground available under section 33 that the instrument sought to be enforced is voidable or the agreement is void, for the reason that the Commissioner was not competent to alter the condition of auction. He also argued that the principles of equitable estoppel cannot be attracted in the facts of the case.

6. The first question which arises for consideration

is whether the respondent-Corporation has power to review or recall its earlier decision. In order to answer this question, it will be necessary to have a brief survey of some of the relevant provisions of the Bombay Provincial Municipal Corporations Act, 1949 (for short, 'the BPMC Act'). Section 73 empowers the Commissioner to execute contracts on behalf of the Corporation. Section 74 provides the mode of executing contract. Section 79 deals with disposal of the property of the Municipal Corporation. Clause (c) of Section 79 provides that the property belonging to the Corporation may be disposed of by way of lease, sale, letting-out on hire or otherwise any movable or immovable property by the Commissioner with the sanction of the Standing Committee. Chapter II under the schedule deals with the proceedings of the Corporation, Standing Committee, Transport Committee etc. Sub-clause (r) provides that no Resolution passed by the Corporation shall be modified or cancelled within a period of three months after the passing thereof, except by a Resolution supported by not less than one and half of the whole number of Councillors, or by such larger number of Councillors as may be required by this Act. Relevant clause reads as follows:

"(r) no resolution passed by the Corporation shall be modified or cancelled within three months after the passing thereof, except by a resolution supported by not less than one half of the whole number of councillors or by such larger number of Councillors as may be required by this Act in any particular case and passed at a meeting whereof notice shall have been given fulfilling the requirements of clause (h) and setting forth fully the resolution which it is proposed to modify or cancel at such meeting and the motion or proposition for the modification or cancellation of such resolution."

8. It is well settled that if a General Board or authority is competent to transact a business, it is competent to modify or cancel a decision taken by it earlier. Shackleton on the Law and Practice of Meetings by Shearman, a standard work on the organisation and the regulation of meetings on Rescission of a Resolution has said thus -

"Once a motion has been voted upon and has achieved the requisite majority, it becomes a resolution of the meeting. It can be rescinded only by a subsequent resolution of the same body, for which there will usually be an implied power.

Frequently however the regulations of the body concerned will provide that no motion to rescind any resolution passed within, say, the previous six months, and no motion or amendment to the same affect as one which has been negatived during the same period, shall be proposed unless a stated minimum number of members shall raise the matter in writing. The same rule would be applied to the motion for rescission itself."

Thus, from the reading of the provisions of the BPMC Act, referred to above, two things clearly emerge - firstly that the power of the Commissioner to lease or sale the immovable property of the Corporation is subject to sanction of the Standing Committee, in view of the provisions of section 79 (c). Secondly a Resolution of the Corporation can be modified or cancelled after gap of a period of three months by another Resolution in accordance with sub-rule (r) of the Rules of proceedings. Thus at the first instance the plot in question could not be sold by the Commissioner on the altered conditions without the sanction of the Standing Committee in view of section 79(c). The Commissioner placed the auction proceedings before the Standing Committee and the Administrator exercising the powers of the Standing Committee only said "Taken note of". Saying "taken note of" does not amount to sanction of the proposals. The Administrator, again exercising the power of the General Body, by resolution dated 8.7.94 said, "Recommendation accepted". Thus what has been accepted is only "taken note of". There is no sanction for the sale or lease of the plot No.76. The Standing Committee is competent to accept or not to accept the proposal for sale or lease. No right is vested in the petitioner only on the basis of agreement to sale executed prior to sanction. Alternatively, assuming that the resolution dated 8.7.1994 has effect of sanction of lease or sale, then also the said resolution has been cancelled by the resolution of the General Body dated 6.3.1996.

8. It is next contended by Mr K G Vakharia, ld. Sr.Counsel that before passing the impugned resolution, neither the Standing Committee nor the General Board gave any opportunity of hearing to the petitioner. He has placed reliance on a decision of the Apex Court in the case of Dr. Rash Lal Yadav v. State of Gujarat, reported in 1994 (5) SCC 267. It is submitted that even in the case of administrative action having civil consequences, it is necessary to follow the principles of natural justice. failing which the decision will render illegal and void. In the aforesaid case, the petitioner

challenged his removal from the office of Chairman, Bihar School Service Board constituted under the provisions of the Bihar Non-Government Secondary Schools (Taking-over of Management and Control) Act, 1981. The Division Bench of the Bihar High Court dismissed the petition. The Apex Court while considering the various earlier decisions, held that unless the law expressly or by necessary implication excludes the application of the rule of natural justice, courts will read the said requirement in enactments and insist on its application even in cases of administrative action having civil consequences. The Apex Court ultimately upheld the judgment of the High Court considering the legislative intendment to exclude the rule of giving an opportunity to be heard before the exercise of power of removal. The Apex Court in the case of State of Gujarat vs. Meghji Pethraji Shah, reported in JT 1994 (3) SC 96 held that termination of an arrangement is not a quasi judicial act and hence by no stretch of imagination, it requires observance of principles of natural justice. In the instant case, the question of personal hearing to the petitioner does not arise for the reason that the petitioner has throughout been acquainted with the proceedings, inasmuch as before the impugned resolutions, the Commissioner gave reasons in detail for resubmitting the matter before the Standing Committee, in pursuance of the directions of this Court. The copy of the said speaking order was given to the petitioner. The reasons for resubmission given by the Commissioner are the foundation of the resolution of the Standing Committee and the General Body. The reasons given for cancellation of the resolution has been argued before this Court in great detail, which shall be dealt with hereinafter. Thus, in view of the fact that the impugned orders have been passed during the pendency of the petition and a fulfilled hearing has been given on the merit of the case, the impugned resolution cannot said to be bad on the ground that the petitioner was not given opportunity of hearing by the Standing Committee or the General Body of the respondent-Corporation. The Apex Court dealing with the natural justice in the case of Board of Mining Examination v Ramjee, reported in AIR 1977 SC 965 has observed thus-

"Natural justice is no unruly horse, no lurking land mine, not a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural

expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating."

The Standing Committee did not approve the auction and directed to cancel the same as in its opinion, at the first instance, the Commissioner had no power to amend the conditions of the auction and secondly, even if he had such power, he should have re-advertised with the amended conditions after obtaining permission from the Standing Committee. The view of the Standing Committee is absolutely legal and justified. It is not in dispute that Plot No.76 is a part of the T.P. scheme wherein the purpose given is 'neighbourhood centre' at column No.3. In the advertisement, the purpose is clearly mentioned as "neighbourhood centre (local shops, library, public hall, open space, electric sub-station, guest house etc.) Though the neighbourhood centre has not been defined, it is ordinarily understood as a centre or area of land consisting of local shops, library, public hall, electric sub-station, guest house etc. Thus, it clearly appears that reservation was made in the TP Scheme for the purpose of making the plot available to be utilised for public purpose such as library, public hall, electric sub-station, guest house etc. and some shops to cater the needs of the people who may visit the said public premises. In view of this understanding, there could be obvious disinclination on the part of the people to purchase the land. If the intending purchaser had known the amended conditions that the Corporation will get/change the permission for residential, commercial and high-rise building, they would have also participated in the auction. The possibility cannot be ruled out that in that event, the subject land would have fetched much higher price. It is wrong to say that the Commissioner had only clarified the existing auction condition and there was no change. Even a just reading of the condition as suggested by the petitioner and the partly accepted condition clearly indicates that there is not only just a change in condition but there is substantial change. Therefore, the view taken by the Standing Committee and as approved by the General Body is absolutely legal and justified. It is also established law that if there is a change in the condition of auction, it should be readvertised. The view taken by the Standing Committee on this aspect is in consonance with the view expressed by the Apex Court in a number of cases.

11. Dealing with the allegations of malafides that

the elected body has taken a decision against the petitioner to cancel the auction for political reasons, I find nothing on record to indicate that any extraneous reason existed in taking the impugned decision either by the Commissioner or the Standing Committee or the General Body. On the contrary, it appears from the affidavit filed by the Commissioner that the resolution dated 6.3.1996 was passed by the General Board of the respondent-Corporation unanimously and the said resolution was moved by the councillors belonging to the ruling party as well as the Congress party and an Independent. In view of this, the impugned auction cannot be termed as perverse or malafide.

12. Before parting with, I may say a word with respect to the objectionable statement made by the petitioner in the memo of the petition against the elected members of the Corporation. In para 13 E it is stated that the entire body without application of mind, being guided away by like sheep by the opinion of the Municipal Commissioner. The relevant portion is extracted as follows:

"13.B. It is a matter of shame in democracy that a group of people do not apply their mind at all and is simply are guided away by the report of the Municipal Commissioner."

"13.E. Entire body, without application of mind, being guided away by like sheeps by the opinion of the Municipal Commissioner."

The pleadings is affirmed by Vinubhai K Shah, one of the partners of Shah & Patel Construction Company. While disapproving this sort of pleadings in a writ petition, I may further say a Lawyer owes a duty to see that undesirable language is not used in the petition. A Lawyer cannot be simply a mouthpiece of his client. He is a member of the learned profession and his prime duty is to assist the Court in administration of justice with sobriety, modesty and restraint.

13. In view of the afoesaid, I find no merit in this Special Civil Application and the same is accordingly rejected. Rule discharged.

...

